

# ***EXHIBIT 5***

***REDACTED VERSION  
OF DOCUMENT  
SOUGHT TO BE SEALED***

# ***EXHIBIT 5***

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

WAYMO LLC, )  
Plaintiff )  
vs. ) Case No.  
UBER TECHNOLOGIES, INC.; ) 3:17-cv-00939-WHA  
OTTOMOTTO LLC; OTTO TRUCKING )  
INC. )  
Defendants )  
----- )

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF MICHAEL YU XING

(30)(b)(6)

Palo Alto, California

Thursday, August 17, 2017

Reported by:

JOANNE M. FARRELL, RPR, CRR

CSR Nos. 4838(CA) 506(HI) 507(NM)

JOB No. 2681960A

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1 Q. Okay. And do you know who contributed to 9:09:50AM  
2 drafting this document?

3 A. Not specifically.

4 Q. Would it be the same people you named:

5 David Lawee, Eric Schaffer, Sebastian Thrun? 9:09:56AM

6 A. They would have participated, but there may  
7 have been others, as well.

8 Q. Okay. We might come back to these from  
9 time to time, so you can keep those --

10 A. Sure. 9:10:07AM

11 Q. -- in front of you. The other one you can  
12 set aside.

13 And most other exhibits I hand you you can  
14 set aside as soon as we are finished talking about  
15 them. 9:10:13AM

16 A. Sure.

17 Q. Okay. So speaking about the Project  
18 Chauffeur Bonus Plan as represented in Exhibit 1602,  
19 have there been any payments made under that plan to  
20 date? 9:10:23AM

21 A. Yes.

22 Q. When were the first payments made?

23 A. The first payments were made to individuals  
24 who left the plan. [REDACTED]

[REDACTED] 9:10:36AM

1 Q. What were their names? 9:10:38AM

2 A. [REDACTED]

3 THE COURT REPORTER: I'm sorry. What was  
4 that -- the names?

5 THE WITNESS: [REDACTED] 9:10:45AM

6 THE COURT REPORTER: How do you spell it?

7 THE WITNESS: [REDACTED]

8 [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED] 9:10:51AM

11 THE COURT REPORTER: Okay. Thanks.

12 BY MS. TAPERNOUX:

13 Q. And were there any other payments made to  
14 early terminations?

15 MS. ROBERTS: Object to the form. 9:11:03AM

16 BY MS. TAPERNOUX:

17 Q. In that first group you were talking about.

18 I think I cut you off, I'm sorry.

19 A. Yeah. What -- what do you mean by "early  
20 terminations"? 9:11:11AM

21 Q. So you said something to the effect of the  
22 first payments were made to [REDACTED]

23 [REDACTED] [REDACTED]

24 Were there any others who [REDACTED]

25 [REDACTED] 11:21AM

1 A. No. 9:11:25AM

2 Q. And when were the termination payments paid  
3 out in relation to when those individuals left the  
4 company?

5 A. They were -- 9:11:35AM

6 MS. ROBERTS: Objection. Form.

7 THE WITNESS: They were paid out roughly  
8 [REDACTED] after their termination.

9 BY MS. TAPERNOUX:

10 Q. Okay. And what was the reason for that 9:11:46AM  
11 time period?

12 A. That is the period specified in the plan --

13 Q. Uh-huh.

14 A. -- that must be observed before the  
15 payments can be made. 9:11:56AM

16 Q. And what process was followed in order to  
17 go from the date that those individual -- well,  
18 let's start with [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 MS. ROBERTS: Objection. Form. 9:12:20AM

1 THE WITNESS: A reminder was established on 9:12:23AM  
2 the calendar and --

3 BY MS. TAPERNOUX:

4 Q. On the comp team calendar?

5 A. On my calendar? 9:12:30AM

6 Q. Yeah.

7 A. On someone's calendar. I can't recall who  
8 exactly was processing it.

9 And when that reminder was triggered, then  
10 the bonus was processed at the -- at the correct 9:12:38AM  
11 time after that reminder.

12 Q. Who processed the bonus?

13 A. I don't remember.

14 Q. Okay. Was there any approval process  
15 required? 9:12:48AM

16 A. No.

17 Q. Okay. And you said roughly [REDACTED]  
18 pursuant to the time frame laid out in the bonus  
19 plan?

20 A. Uh-huh. 9:12:58AM

21 Q. Was that time frame more specific than  
22 that?

23 A. The bonus plan requires a waiting period of

24 [REDACTED]

25 Q. Okay. 9:13:08AM

1 A. -- at a minimum. 9:13:08AM

2 Q. Uh-huh.

3 A. So after that, I don't think there is any  
4 specificity --

5 Q. Okay. 9:13:15AM

6 A. -- towards payment date.

7 Q. So the bonus plan requires at least [REDACTED]  
[REDACTED] but it doesn't specify a maximum  
9 time period until the bonus can be paid?

10 MS. ROBERTS: Objection. Form. 9:13:26AM

11 BY MS. TAPERNOUX:

12 Q. I can rephrase that.

13 Is there a time period set forth in the  
14 bonus plan by which time the bonus must be  
15 disbursed. 9:13:34AM

16 A. My understanding is it must be done just as  
17 quickly as administratively feasible.

18 Q. Okay. Thank you.

19 And was the same process followed for the

20 [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

22 Q. And after those two termination bonuses  
23 were paid, when was the next bonus paid pursuant to  
24 the Chauffeur Bonus Plan?

25 A. I believe that would have been the 9:13:58AM

1

3

Q. Great.

4

A. -- under the plan.

5

Q. And for those payments, what was the

9:14:10AM

6

process from when the bonus amounts were decided to

7

when they were paid out to the individuals?

8

MS. ROBERTS: Objection. Form. Beyond the

9

scope.

10

THE WITNESS: After the bonus amounts were

9:14:29AM

11

finalized, I -- well -- so I calculated the bonus

12

amounts, and after that they were finalized.

13

Following that, the bonus amounts had to be

14

communicated to the participants, so letters were

15

created and distributed to participants to inform

9:14:47AM

16

them of their bonus amount.

17

After those letters were distributed, then

18

the bonuses were submitted for payment and

19

processing.

20

BY MS. TAPERNOUX:

9:14:59AM

21

Q. Okay. Now, you said you calculated the

22

bonuses?

23

A. I did.

24

Q. How did you calculate them?

25

A. Each individual has a running percentage

9:15:06AM



1 allocation in the plan -- 9:15:09AM

2 Q. Uh-huh.

3 A. -- that we have been tracking over time.

4 After the evaluation, project evaluation was

5 finalized for the purpose of the plan, the bonuses 9:15:18AM

6 were calculated as their percentage allocation and

7 multiplied by the project valuation.

8 Q. And were you involved with either the

9 allocations or the valuation that were involved in

10 that calculation? 9:15:31AM

11 MS. ROBERTS: Objection to form.

12 THE WITNESS: Can you specify what you mean

13 by "involved"?

14 BY MS. TAPERNOUX:

15 Q. Did you participate in determining the 9:15:36AM

16 allocation amounts that you just referred to?

17 A. No.

18 Q. Did you participate in determining the

19 valuation that was used to calculate the bonuses?

20 A. No. 9:15:45AM

21 Q. How was the date of December 31st, 2015

22 selected for the payouts?

23 A. The valuation was finalized towards the end

24 of November, early December of 2015. I proposed

25 that the bonuses be paid out on December 31st to 9:16:04AM

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1 specifically later, but for now we will just move 9:17:01AM  
2 forward a little bit.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

[REDACTED]

6 [REDACTED]

7 [REDACTED]

8 MS. ROBERTS: Objection to form. Beyond  
9 the scope.

10 BY MS. TAPERNOUX:

9:17:17AM

11 Q. And what were those?

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q. Okay. And were those paid to all

9:17:31AM

16 participants in the plan that were employed at that  
17 time?

18 A. Correct.

19 Q. Okay. I'll probably also return to that in  
20 a little bit.

9:17:43AM

21 So speaking of all the bonus that have been  
22 paid out under the plan, have they all been  
23 calculated pursuant to the formula set forth in the  
24 Chauffeur Bonus Plan?

25 A. Which formula are you referring to?

9:18:00AM

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1 Q. The formula you described when I asked how 9:18:03AM  
2 they were calculated, the allocation times the  
3 valuation.

4 A. Got you. Yes.

5 Q. Has Google ever made any adjustments to 9:18:09AM  
6 that calculation for any individual bonus?

7 A. No.

8 Q. Has Google ever considered making any  
9 adjustments to that calculation?

10 MS. ROBERTS: Objection. Form. Beyond the 9:18:19AM  
11 scope.

12 THE WITNESS: I'm not sure.

13 BY MS. TAPERNOUX:

14 Q. Speaking about the allocations themselves,  
15 has Google ever revised the allocations, that you're 9:18:26AM  
16 aware of?

17 MS. ROBERTS: Objection. Form. Beyond the  
18 scope.

19 THE WITNESS: Sorry. You said has Google  
20 ever revised the allocations? 9:18:38AM

21 BY MS. TAPERNOUX:

22 Q. Uh-huh.

23 A. No.

24 Q. Do you ever field questions from the plan  
25 participants about their bonuses? 9:18:52AM

Page 23

1	A. Occasionally.	9:18:56AM
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2	Q. Occasionally?
---	------------------

3 Do you recall any specific questions that  
4 you've been asked or answered?

5 MS. ROBERTS: Objection. Form. Beyond the 9:19:03AM  
6 scope.

7 THE WITNESS: Mostly questions around  
8 mechanics.

9 BY MS. TAPERNOUX:

10	Q. So when they will be paid?	9:19:09AM
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11 MS. ROBERTS: Objection. Form.

12 THE WITNESS: Timing, yes, and also, you  
13 know, how calculations -- the calculations were  
14 actually being done.

15	BY MS. TAPERNOUX:	9:19:25AM
----	-------------------	-----------

16 Q. Has Google ever withheld any payments under  
17 the bonus plan?

18	A. No.
----	--------

19 Q. Has Google ever considered withholding  
20 payments, that you're aware of? 9:19:42AM

21 A. Not that I'm aware of.

22 Q. Are you aware of any discussions about the  
23 idea that Google had the discretion over whether to  
24 pay the amounts due under the bonus plan?

25	MS. ROBERTS: Objection. Form. Beyond the	9:19:53AM
----	--	-----------

1 scope. 9:19:55AM

2 THE WITNESS: No, not to my awareness.

3 BY MS. TAPERNOUX:

4 Q. Are you aware that Google has that

5 discretion? 9:20:00AM

6 MS. ROBERTS: Objection. Beyond the scope.

7 THE WITNESS: Not to my awareness.

8 BY MS. TAPERNOUX:

9 Q. Thank you.

10 Have there been any bonus plan payments 9:20:05AM

11 made to employees that were not listed in the

12 original 2010 list of participants?

13 MS. ROBERTS: Objection. Form.

14 THE WITNESS: And -- sorry. Bonus plans

15 made to nonparticipants? 9:20:19AM

16 BY MS. TAPERNOUX:

17 Q. Yes.

18 A. Under the plan?

19 [REDACTED]

20 [REDACTED] 9:20:25AM

21 A. No.

22 (Exhibit 1603 was marked for identification

23 by the court reporter and is attached

24 hereto.)

25

1 BY MS. TAPERNOUX: 9:21:10AM

2 Q. I have just handed you a document 1603.

3 Do you recognize this email?

4 A. I do.

5 Q. If you can look at the very top: "Payments 9:21:22AM

6 for resigned Chauffeur plan members have been

7 processed for the individuals listed below and

8 scheduled to pay out on (not before) the date

9 listed."

10 [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] 9:21:43AM

16 Q. Great.

17 And looking at -- let's start with [REDACTED]

[REDACTED] -- has the payout date as [REDACTED]

19 Do you know if that is the date that he

20 received his bonus? 9:21:54AM

21 A. I don't think -- it was the date -- the

22 effective date of the bonus, not the date he

23 received it.

24 Q. Okay. And can you explain to me the

25 difference between the effective date and when the 9:22:04AM

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1 recipient receives the bonus? 9:22:06AM

2 A. Yeah. So the effective date is the date  
3 with -- the effective date defines what date period  
4 or pay period the bonus would fall in.

5 Q. Okay. 9:22:18AM

6 A. But the payout itself occur -- for that pay  
7 period can occur at a later date.

8 Q. Once the effective date is set, does that  
9 trigger a definite payment of the bonus following a  
10 certain time period or does something else have to 9:22:29AM  
11 happen before the bonus becomes deposited?

12 A. As far as I know, that is the trigger.

13 Q. Looking at the [REDACTED] line,  
14 the third bullet point on that list --

15 A. Yes. 9:22:44AM

16 Q. -- were you involved in the disbursement of  
17 that bonus?

18 A. Yes.

19 Q. Do you know if there is any approval  
20 process in place before that bonus was paid? 9:22:50AM

21 MS. ROBERTS: Objection. Form.

22 THE WITNESS: No.

23 MS. ROBERTS: Beyond the scope.

24 BY MS. TAPERNOUX:

25 Q. Do you know how the payout date was -- the 9:23:00AM



1 effective date of [REDACTED] was determined? 9:23:05AM

2 A. Yes. This -- that date was [REDACTED]  
3 [REDACTED] -- following Anthony's termination.

4 Q. And do you know how long after the  
5 effective date Anthony received his bonus? 9:23:15AM

6 A. No, not specifically.

7 Q. And do you recall after the effective  
8 date --

9 When the effective date is established,  
10 what happens in Google systems? 9:23:26AM

11 A. So --

12 MS. ROBERTS: Objection. Form.

13 THE WITNESS: I'm not sure. I'm not a  
14 payroll expert.

15 BY MS. TAPERNOUX: 9:23:36AM

16 Q. Did you have any communications with  
17 Anthony about this bonus?

18 A. No.

19 Q. Did you have any communications with  
20 Anthony while he was at Project Chauffeur at Waymo? 9:23:41AM

21 A. No.

22 Q. Did you have any conversations about  
23 Anthony?

24 A. Yes.

25 MS. ROBERTS: Objection. Form. Beyond the 9:23:51AM

1 scope. 9:23:52AM  
2 BY MS. TAPERNOUX:  
3 Q. Were they all about this bonus?  
4 A. No.  
5 Q. Other than this bonus, what were the topics 9:23:58AM  
6 of the conversation you had with Anthony?  
7 MS. ROBERTS: Objection. Beyond the scope.  
8 THE WITNESS: Largely to assist Chris  
9 Urmson and Sebastian Thrun before him, as the  
10 project leads at the time, with compensation 9:24:11AM  
11 planning, as I normally do for my clients.  
12 BY MS. TAPERNOUX:  
13 Q. Okay. I think we will get more into that  
14 after the 30(b)(6) portion has been concluded.  
15 (Exhibit 1604 was marked for identification 9:24:22AM  
16 by the court reporter and is attached  
17 hereto.)  
18 BY MS. TAPERNOUX:  
19 Q. If you can turn to the second page of 1604,  
20 do you recognize this document? 9:24:53AM  
21 A. I do.  
22 Q. Okay. I'm just going to ask you to walk me  
23 through this document.  
24 So I assume PID is a personal ID number?  
25 A. Correct. 9:25:02AM

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1 Q. Great. 9:25:02AM

2 And are these all of the original Project  
3 Chauffeur bonus plan participants?

4 A. They are.

5 Q. Great. 9:25:11AM

6 And is there anyone who has participated in  
7 the Project Chauffeur Bonus Plan that is not on this  
8 list?

9 A. No.

10 MS. ROBERTS: Objection. Form. Beyond the 9:25:22AM  
11 scope.

12 BY MS. TAPERNOUX:

13 Q. Okay. So starting with the very bottom  
14 section termed "Pre-Pool 1 Payout" --

15 A. Yes. 9:25:29AM

16 Q. -- can you explain your understanding of  
17 that heading to me?

18 A. Yes. [REDACTED]

[REDACTED]

20 Q. And that was [REDACTED] 9:25:40AM

21 A. Correct.

22 Q. Okay. And did you calculate the bonuses  
23 for these [REDACTED]

24 A. I did.

25 Q. Okay. And so for the very bottom person on 9:25:47AM

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1 the list, [REDACTED] there is a bonus award of 9:25:51AM

2 \$0; is that correct?

3 A. That is correct.

4 Q. [REDACTED]

5 [REDACTED]

6 [REDACTED].

7 Q. I see. When -- did most people in the plan

8 receive allocations at the time that the plan was

9 put into place in [REDACTED]

10 MS. ROBERTS: Objection. Beyond the scope. 9:26:18AM

11 THE WITNESS: [REDACTED]

12 BY MS. TAPERNOUX:

13 Q. Okay. Did anyone besides Mr. Kal --

14 A. Yes.

15 Q. -- not receive an initial allocation? 9:26:23AM

16 MS. ROBERTS: Objection. Beyond the scope.

17 THE WITNESS: I believe so, but I don't

18 recall with certainty.

19 BY MS. TAPERNOUX:

20 Q. You don't know who else it would have been? 9:26:32AM

21 A. I don't know who else it would have been.

22 Q. Do you know who we would ask to find out?

23 A. I believe the schedule of initial awards is

24 listed in the term sheet.

25 Q. Great. 9:26:43AM

1           So do you know -- so the term sheet, in my           9:26:43AM  
2     understanding, is a nonfinal version of the Project  
3     Chauffeur Bonus Plan; is that correct?

4           A.   Correct.

5           Q.   Do you know if the allocations in the term       9:26:51AM  
6     sheet changed between the term sheet and the final  
7     allocations?

8           MS. ROBERTS:   Objection.   Beyond the scope.

9           THE WITNESS:   I'm not sure.

10          BY MS. TAPERNOUX:                                       9:26:58AM

11          Q.   And one line up, [REDACTED] received a  
12     termination bonus listed under the "Term Payouts"  
13     column; is that correct?

14          A.   That's right.

15          Q.   And same for [REDACTED]                               9:27:09AM

16          A.   Correct.

17          Q.   Can you tell me how those were calculated?

18          MS. ROBERTS:   Objection.   Form.

19          THE WITNESS:   They were calculated based on  
20     their allocation percentage in the plan multiplied       9:27:19AM  
21     by the then-current project valuation.

22          BY MS. TAPERNOUX:

23          Q.   Did you speak with [REDACTED]  
24     about the calculation of those bonuses?

25          A.   No.   9:27:34AM

1 Q. Did they ever express any concern to anyone 9:27:35AM  
2 at Waymo about the calculation or the payment of  
3 those bonuses?

4 A. No.

5 Q. So going to the next section up, termed 9:27:42AM  
6 "Pre-2016 Refresh," can you explain that section to  
7 me?

8 A. Sure. These are individuals who resigned  
9 from the project prior to the midyear refresh cycle  
10 that occurred in 2016. 9:27:58AM

11 Q. And what is the midyear refresh cycle?

12 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] 9:28:13AM

16 Q. And is this pursuant to the Project  
17 Chauffeur Bonus Plan or the regular Google  
18 Compensation Plan?

19 MS. ROBERTS: Objection to the form.

20 THE WITNESS: Regular Google Compensation 9:28:21AM  
21 Plan.

22 BY MS. TAPERNOUX:

23 Q. Okay. And so how did this refresh affect  
24 the awards under the Chauffeur Bonus Plan?

25 A. These refresh awards -- [REDACTED] 9:28:33AM

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

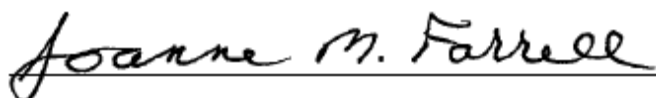
4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were administered an oath; that  
8 a record of the proceedings was made by me using  
9 machine shorthand which was thereafter transcribed  
10 under my direction; that the foregoing transcript is  
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to the  
13 original transcript of a deposition in a Federal  
14 Case, before completion of the proceedings review of  
15 the transcript { } was {X} was not requested.

16 I further certify I am neither financially  
17 interested in the action nor a relative or employee  
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date  
20 subscribed my name.

21 Dated: August 18, 2017

22  
23   
24

25 Joanne M. Farrell, CSR No. 4838